

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 478

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO HEALTH; ENACTING THE BODY ART SAFE PRACTICES ACT;
MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1 through 14 of this act may be cited as the "Body Art Safe Practices Act".

Section 2. [NEW MATERIAL] PURPOSE. -- The purpose of the Body Art Safe Practices Act is to provide a safe and healthy environment for the administration of body art.

Section 3. [NEW MATERIAL] DEFINITIONS. -- As used in the Body Art Safe Practices Act:

A. "board" means the board of barbers and cosmetologists;

B. "body art" means tattooing, body piercing or

1 scarification but does not include practices that are
2 considered medical procedures by the New Mexico medical board;

3 C. "body art establishment" means a fixed or mobile
4 place where body art is administered on the premises;

5 D. "body artist" means a person who administers
6 body piercing, tattooing or scarification;

7 E. "body piercing" means to cut, stab or penetrate
8 the skin to create a permanent hole or opening;

9 F. "equipment" means machinery used in connection
10 with the operation of a body art establishment, including
11 fixtures, containers, vessels, tools, devices, implements,
12 furniture, display and storage areas, sinks and other
13 apparatuses and appurtenances;

14 G. "instruments used for body art" means hand
15 pieces, needles, needle bars and other items that may come into
16 contact with a person's body during the administration of body
17 art;

18 H. "operator" means the owner in charge of a body
19 art establishment;

20 I. "scarification" means cutting into the skin with
21 a sharp instrument or branding the skin with a heated
22 instrument to produce a permanent mark or design on the skin;

23 J. "sharps" means any sterilized object that is
24 used for the purpose of penetrating the skin or mucosa,
25 including needles, scalpel blades and razor blades;

1 K. "single use" means products or items that are
2 intended for one-time, one-person use and are disposed of after
3 use on each client, including cotton swabs or balls, tissues or
4 paper products, paper or plastic cups, gauze and sanitary
5 coverings, razors, piercing needles, scalpel blades, stencils,
6 ink cups and protective gloves;

7 L. "sterilization" means destruction of all forms
8 of microbiotic life, including spores; and

9 M "tattooing" means the practice of depositing
10 pigment, which is either permanent, semi permanent or temporary,
11 into the epidermis using needles by someone other than a state-
12 licensed physician or a person under the supervision of a
13 state-licensed physician and includes permanent cosmetics,
14 dermatography, micropigmentation, permanent color technology and
15 micropigment implantation.

16 Section 4. [NEW MATERIAL] ISSUANCE OF A BODY ART
17 LICENSE.--The board has authority to issue a body art license
18 to a body artist who has demonstrated the ability to perform
19 body art and who conforms with the board's rules with respect
20 to safety, sterilization and sanitation and a body art operator
21 license to an operator who conforms with the board's rules.

22 Section 5. [NEW MATERIAL] LICENSE-- APPLICATION--
23 REVOCATION-- SUSPENSION. --

24 A. A body artist shall obtain a body art license,
25 requirements for which shall be defined by the board that

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1 demonstrate that the body artist has the training and
2 experience necessary to perform body piercing, tattooing or
3 scarification.

4 B. An operator shall obtain a body art operator
5 license, requirements for which shall be defined by the board,
6 that demonstrates that the operator has the training and
7 experience necessary to establish and maintain a sanitary and
8 sterile body art establishment.

9 C. An operator or body artist shall possess and
10 post in a conspicuous place a valid and unsuspended license
11 issued by the board in accordance with the Body Art Safe
12 Practices Act and the rules promulgated pursuant to that act.
13 An operator or a body artist shall not display a license unless
14 it has been issued to the operator or body artist by the board
15 and has not been suspended or revoked.

16 D. An operator or body artist shall apply to the
17 board for the issuance of a license annually and pay license
18 fees established by the board. The operator or body artist
19 shall renew the license annually. The board shall set license
20 fees and license renewal fees in amounts necessary to
21 administer the provisions of the Body Art Safe Practices Act.

22 E. The board shall promulgate rules for the
23 revocation or suspension of licenses for those operators and
24 body artists who fail to comply with a provision of the Body
25 Art Safe Practices Act. A license shall not be suspended or

1 revoked pursuant to the Body Art Safe Practices Act without
2 providing the operator or the body artist an opportunity for an
3 administrative hearing unless conditions in the body art
4 establishment warrant immediate suspension pursuant to Section
5 9 of the Body Art Safe Practices Act. The hearing officer
6 shall not be a person previously involved in the suspension or
7 revocation action. An inspection made more than twenty-four
8 months prior to the most recent inspection shall not be used as
9 a basis for suspension or revocation.

10 F. The board shall charge a fee not to exceed one
11 hundred fifty dollars (\$150) for the application or annual
12 renewal of a license. The operator or body artist shall
13 provide proof of attendance at a blood-borne pathogen training
14 program and other training as required and approved by the
15 board before a license is issued.

16 G. A current body art or body art operator license
17 shall not be transferable from one person to another.

18 H. Operators and body artists engaged in the body
19 art business before the effective date of the Body Art Safe
20 Practices Act shall have one hundred eighty days from the
21 issuance of rules promulgated by the board to comply with
22 license requirements.

23 I. The following information shall be kept on file
24 on the premises of a body art establishment and available for
25 inspection by the board:

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1 (1) the full names of all employees in the
2 establishment and their exact duties;

3 (2) the board-issued license with
4 identification photograph;

5 (3) the body art establishment name and hours
6 of operation;

7 (4) the name and address of the body art
8 establishment owner;

9 (5) a complete description of all body art
10 performed;

11 (6) a list of all instruments, body jewelry,
12 sharps and inks used, including names of manufacturers and
13 serial or lot numbers or invoices or other documentation
14 sufficient to identify and locate the manufacturer; and

15 (7) a copy of the Body Art Safe Practices Act.

16 J. An operator shall notify the board in writing
17 not less than thirty days before changing the location of a
18 body art establishment. The notice shall include the street
19 address of the new location.

20 Section 6. [NEW MATERIAL] INSPECTION BY BOARD. --

21 A. The board shall annually inspect body art
22 establishments to determine compliance with the Body Art Safe
23 Practices Act. An operator or body artist shall allow a board
24 official, upon proper identification, to enter the premises,
25 inspect all parts of the premises and inspect and copy records

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1 of the body art establishment. The operator or body artist
2 shall be given an opportunity to accompany the board official
3 on the inspection and to receive a report of the inspection
4 within fourteen days after the inspection.

5 B. Refusal to allow an inspection is grounds for
6 suspension or revocation of the license of the operator or body
7 artist, provided that the board official tendered proper
8 identification prior to the refusal.

9 Section 7. [NEW MATERIAL] EXEMPTIONS. --

10 A. A person who pierces only the outer perimeter of
11 the ear, not including any cartilage, using a pre-sterilized
12 encapsulated single use stud ear piercing system, implementing
13 appropriate procedures, is exempt from the requirements of the
14 Body Art Safe Practices Act.

15 B. A member of a federally recognized tribe, band,
16 nation or pueblo who performs scarification rituals for
17 religious purposes is exempt from the requirements of the Body
18 Art Safe Practices Act.

19 Section 8. [NEW MATERIAL] STERILE PROCEDURES AND
20 SANITATION. --The board shall establish by rule requirements
21 for:

22 A. the use and disposal of equipment and
23 instruments; provided that:

24 (1) all sharps shall be sterilized prior to
25 use;

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1 (2) single use items shall not be used on more
2 than one client for any reason; and

3 (3) all body art stencils shall be single use
4 and disposable;

5 B. the sterilization or sanitation of non-
6 disposable items;

7 C. the prohibition of off-site sterilization; and

8 D. procedures to control disease borne by contact
9 with customer or body artist skin mucosa.

10 Section 9. [NEW MATERIAL] IMMEDIATE SUSPENSION. -- The
11 board may suspend a license immediately without prior notice to
12 the holder of the license if it determines, after inspection,
13 that conditions within a body art establishment present a
14 substantial danger of illness, serious physical harm or death
15 to customers who might patronize a body art establishment. A
16 suspension action taken pursuant to this section is effective
17 when communicated to the operator or body artist. Suspension
18 action taken pursuant to this section shall not continue beyond
19 the time that the conditions causing the suspension cease to
20 exist, as determined by a board inspection at the request of
21 the operator or body artist.

22 Section 10. [NEW MATERIAL] JUDICIAL REVIEW. -- An applicant
23 denied a license or an operator or body artist whose license is
24 suspended or revoked by the board may appeal pursuant to
25 Section 39-3-1.1 NMSA 1978.

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1 Section 11. [NEW MATERIAL] ENFORCEMENT. --

2 A. The board may seek relief in district court to
3 enjoin the operation of a body art establishment or the
4 practice of a body artist not in compliance with the Body Art
5 Safe Practices Act.

6 B. The district court may impose a civil penalty
7 not exceeding five hundred dollars (\$500) for a violation of
8 the Body Art Safe Practices Act. Each violation of the
9 provisions of the Body Art Safe Practices Act constitutes a
10 separate offense.

11 C. The board may promulgate rules imposing a
12 schedule of penalties for violations of the Body Art Safe
13 Practices Act, provided that no penalty exceeds one hundred
14 fifty dollars (\$150).

15 Section 12. [NEW MATERIAL] USE OF BARBERS AND
16 COSMETOLOGISTS FUND. --All license fees and penalties imposed by
17 the board pursuant to the Body Art Safe Practices Act shall be
18 deposited in the barbers and cosmetologists fund. Any
19 unexpended or unencumbered balance remaining at the end of a
20 fiscal year shall not revert to the general fund.

21 Section 13. [NEW MATERIAL] MUNICIPALITIES. --The Body Art
22 Safe Practices Act provides minimum standards for safe body art
23 practices. A municipality may by ordinance provide more
24 stringent standards.

25 Section 14. [NEW MATERIAL] RULES. --The board shall, in

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1 conjunction with the department of health, promulgate rules
2 necessary to implement the provisions of the Body Art Safe
3 Practices Act by September 1, 2005.

4 Section 15. Section 61-17A-6 NMSA 1978 (being Laws 1993,
5 Chapter 171, Section 6, as amended) is amended to read:

6 "61-17A-6. BOARD CREATED--MEMBERSHIP. --

7 A. The "board of barbers and cosmetologists" is
8 created. The board shall be administratively attached to the
9 regulation and licensing department. The board shall consist
10 of nine members appointed by the governor. Members shall serve
11 three-year terms; provided that at the time of initial
12 appointment, the governor shall appoint members to abbreviated
13 terms to allow staggering of subsequent appointments.
14 Vacancies shall be filled in the manner of the original
15 appointment.

16 B. Of the nine members of the board, five shall be
17 licensed pursuant to the Barbers and Cosmetologists Act and
18 shall have at least five years' practical experience in their
19 respective occupations. Of those five, two members shall be
20 licensed barbers, two members shall be licensed cosmetologists
21 and one member shall represent school owners. Two members
22 shall be licensed body artists pursuant to the Body Art Safe
23 Practices Act and shall have at least five years in practice in
24 their occupation. The remaining [~~four~~] two members shall be
25 public members. Neither the public members nor their spouses

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1 shall have ever been licensed pursuant to the provisions of the
2 Barbers and Cosmetologists Act, the Body Art Safe Practices Act
3 or similar prior legislation or have a financial interest in a
4 school or establishment.

5 C. Members of the board shall be reimbursed
6 pursuant to the Per Diem and Mileage Act and shall receive no
7 other compensation, perquisite or allowance.

8 D. The board shall elect from among its members a
9 chairman and such other officers as it deems necessary. The
10 board shall meet at the call of the chairman, not less than
11 four times each year. A majority of members currently serving
12 shall constitute a quorum for the conduct of business.

13 E. No board member shall serve more than two full
14 consecutive terms and any member who fails to attend, after
15 proper notice, three meetings shall automatically be
16 recommended for removal unless excused for reasons set forth by
17 board regulation. "

18 Section 16. Section 61-17A-7 NMSA 1978 (being Laws 1993,
19 Chapter 171, Section 7, as amended) is amended to read:

20 "61-17A-7. BOARD POWERS AND DUTIES. --

21 A. The board shall:

22 (1) adopt and file, in accordance with the
23 State Rules Act, rules necessary to carry out the provisions of
24 the Barbers and Cosmetologists Act and the Body Art Safe
25 Practices Act;

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- 1 (2) establish fees;
- 2 (3) provide for the examination, licensure and
3 license renewal of applicants for licensure;
- 4 (4) establish standards for and provide for
5 the examination, licensure and license renewal of manicurists-
6 pedicurists, estheticians, [~~and~~] electrologists and body
7 artists and operators pursuant to the Body Art Safe Practices
8 Act;
- 9 (5) adopt a seal;
- 10 (6) furnish copies of rules and sanitary
11 requirements adopted by the board to each owner or manager of
12 an establishment, enterprise or school;
- 13 (7) keep a record of its proceedings and a
14 register of applicants for licensure;
- 15 (8) provide for the licensure of barbers,
16 cosmetologists, manicurists-pedicurists, estheticians, body
17 artists and operators pursuant to the Body Art Safe Practices
18 Act, electrologists, instructors, schools, enterprises and
19 establishments;
- 20 (9) establish administrative penalties and
21 fines;
- 22 (10) create and establish standards and
23 fees for special licenses; and
- 24 (11) establish guidelines for schools to
25 calculate tuition refunds for withdrawing students.

